

REPORT - PLANNING COMMISSION MEETING
September 23, 2004

Project Name and Number: Double Wood Golf Course (PLN2005-00056)

Applicant: Double Wood Golf Course, LLC

Proposal: Annual review of the Development Agreement

Recommended Action: Find the developer in compliance with the Development Agreement

Location: Generally located between the terminus of Green Valley Road and Rancho Higuera Road, east of I- 680 in the Warm Springs Planning Area

Assessor Parcel Number(s): 519-1725-6-001, 519-1718-005, 519-1726-001, 519-1726-057, 519-1726-087

Area: Approximately 400 acres

Owner: Double Wood Golf Course, LLC

Agent of Applicant: James Tong, Double Wood Golf Course, LLC

Consultant(s): Paul Kozachenko, Attorney

Environmental Review: This review is not a project as defined in the CEQA Guidelines, Section 15368, no further action is required and none of the conditions of CEQA Guidelines Section 15162 requiring additional environmental documents exist.

Existing General Plan: Hill Face Open Space, Toe of the Hill and Open Space.

Existing Zoning: P-90-9, Planned District (Amendment I)

Existing Land Use: Undeveloped open space portion of Avalon Homes development

Public Hearing Notice: Public hearing notification is applicable. A total of 338 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Estates Terrace, Belmont Terrace, Alpine Drive, Woodside Terrace, Monte Sereno Terrace, Montecito Drive, Piedmont Terrace, Saint Francis Terrace, Rancho Higuera Road, Galindo Drive, San Clemente Terrace, Avalon Heights Terrace and Costa Mesa Terrace. The notices to owners and occupants were mailed on September 10, 2004. A Public Hearing Notice was delivered to The Argus on September 3, 2004 to be published by September 9, 2004.

Executive Summary: Double Wood Golf Course, LLC entered into a development agreement with the City on July 23, 2002 (PLN2002-00273). The Development Agreement requires Double Wood to submit a letter to the Community Development Director setting forth the developer's good faith effort with the terms and conditions of the agreement. As correctly stated in the developer's letter, during the review period 2003-2004, no obligations were required to be performed by Double Wood. Staff recommends the Planning Commission find the developer in compliance with the Development Agreement.

Background and Previous Actions: P-90-9, DA 90-1, GP-90-7 and EIR-90-31 were approved in May 1990 for the Avalon residential project. The subject parcel was included in the Avalon Homes as private open space. On May 23, 1995, the City Council approved a planned district amendment (P-90-9H) to allow the consideration of a golf course on the subject property. On July 9, 1996, the City Council approved Double Wood's proposed amendment to the Planned District, P-90-9 (I), for the 18-hole golf course.

On October 11, 2001, the Planning Commission approved a preliminary grading plan and minor amendments to the Planned District to reflect changes resulting from requirements of the State Regional Water Quality Control Board (PLN 2001- 00360). On July 23, 2002, the City Council approved the Development Agreement (PLN2002-00273).

Golf Course Construction Status: The developer's letter for this year's review states that "Since the execution of the Development Agreement, despite the poor economy, Double Wood has continued to take steps to put it in a position to start grading the project at some point in the future." Double Wood's letter also notes that the "...California Tiger Salamander has been listed as a threatened species so that the mitigation measures previously approved by the California Tiger Salamander will now have to be considered by the U.S. Fish and Wildlife Service. Double Wood has requested that the Service initiate a 'conferencing' process."

Prior to last year's review, Double Wood engaged Balance Hydrologics to address concerns raised by the Regional Water Quality Control Board regarding the draft integrated pest management control plan and the water quality plan. Discussion on the pest management plan continues.

Development Agreement Description: The Development Agreement requires Double Wood to submit a letter to the Community Development Director setting forth the developer's good faith effort with the terms and conditions of the agreement. The major features of the agreement are summarized in the following section. The summary is followed with a section discussing the developer's compliance with the provisions of the agreement.

City Benefits:

Green Fee discount: City of Fremont seniors (60 years old and over) and juniors (18 years old or younger) are to receive green fee minimum discounts of 10 percent for play Monday through Thursday. If discounts are offered to other nonresidents, the discount for Fremont seniors and juniors will be 5 percent in addition to the discount offered to other seniors and/or juniors. For example, should a discount of ten percent be offered to all seniors, Fremont seniors will be given a 15 percent discount.

City Tournaments: Two City-sponsored tournaments per year will be provided. One-year in advance scheduling will be required.

Free Passes: Four free passes per month are to be provided to the City Manager for use by the City for business development purposes.

Advance Bookings: City residents will be allowed to book tee times one day in advance of non-residents if the City implements a program providing discounts and other benefits for residents of Fremont. The golf course operator will not be obligated to provide these one-day advance bookings if the City fails to initiate and operate such a program.

City Use of Clubhouse: The City would have the right to use the clubhouse facilities four times per year for City activities.

Cash Contribution: In the sixth year of course operation, Double Wood is required to pay the City \$22,500 during that year and each year after for nine more years, for a total of \$225,000.

Developer's Benefits:

Vested Rights: The Planned District, the preliminary grading plan and other City approvals (the "Existing Approvals") will control the development of the golf course. The agreement precludes applying to the project any regulation or similar action enacted after the July/August 2002 Development Agreement ("Subsequent Enactment") which prevents the construction of the golf course or would require Double Wood to obtain additional discretionary approvals that would be inconsistent with the terms of the agreement. With the vested rights provided by the Development Agreement, Double Wood is not subject to Hill Initiative of 2002 (Measure T), which was enacted by the voters in November 2002.

The agreement does not prevent the City from imposing new City-wide fees or modifying existing City-wide fees providing those fees do not conflict with the terms, spirit or intent of the agreement. Changes to or new uniform code regulations and new rules, regulations and official policies which do not conflict with existing ones and do not prevent or otherwise restrict the golf course construction are also allowed.

Building Moratorium: Should any building moratorium or similar measure be adopted during the life of the development agreement, the City would not apply it to the golf course to the fullest extent permitted under State law.

City Cooperation: The agreement required the City to cooperate with Double Wood in its efforts to get approvals from other public agencies. All the necessary permits or approvals from other public agencies have been obtained.

Development Agreement Term: Unless extended, the development agreement expires in 2012. The City benefits related to the golf course operations would continue on for the life of the course, unless modified or deleted by mutual agreement.

Compliance Analysis: All of the developer's obligations are triggered by the start of golf course operations. Since the golf course has not been constructed, none of the requirements summarized above were required during the 2003-2004 review period. Thus, staff recommends the developer be found to be in compliance with the Development Agreement.

Environmental Review: In April 1991, the City Council certified the original EIR-90-31 as complete in conjunction with approval of the Avalon development Planned District P-90-9. EIR-90-31A, the subsequent environmental impact report (SEIR) for the golf course was recommended as complete by the Planning Commission on May 26, 1996 and certified by the City Council on July 9, 1996. On March 28, 2000, the City Council denied an appeal of the Assistant City Manager's decision to prepare an addendum to the SEIR. On April 18, 2000, the Assistant City Manager approved an addendum to the SEIR for the golf course to reflect changes made to the mitigation measures required by the State Regional Water Quality Control Board. The SEIR and its addendum cover this project. This review is not a project as defined in the CEQA Guidelines, Section 15368, no further action is required and none of the conditions of CEQA Guidelines Section 15162 requiring additional environmental documents exist.

Mitigation Monitoring Report: The following material is provided as information only, with no action required by the Planning Commission.

Double Wood is required to periodically submit a report on the implementation of mitigation measures required by the City and other public agencies. Some mitigation measures are required prior to issuance of the grading permit, others are triggered by actual construction and some involve monitoring of the course and restored creek habitat ten years after construction. Only one mitigation measure, related to the California tiger salamander has been triggered so far. The California Department of Fish and Game required off-site mitigation (acquisition of 2.6 acres of California tiger salamander breeding and aestivation area) for the loss of the salamander. In addition, Condition 40 of P-90-9I, required translocation of salamanders from the project site to two ponds on City-owned property above the project site. Monitoring of survival of tiger salamanders relocated to a pond was required by the City. Monitoring of the translocation of the California tiger salamander and the pond habitat has occurred over the last seven years. During that time, reexcavation of the relocation ponds was needed to remove accumulated sediment and increase pond depth. Over the course of the years, breeding of the salamanders at the relocation pond was mixed, i.e., some years there was no sign of breeding and some years there was successful breeding. Successful breeding requires rain at the appropriate time, relatively warm temperatures and retention of water in the ponds for sufficient time for larvae to develop to metamorphosis. Double Wood's biological consultant report for this year states that in April of 2004, four salamander larvae were netted in the lower pond and seven in the upper pond. In May of 2004, larvae were observed in both ponds. These observations suggest a successful breeding season. It should be noted that Condition 40 states that "it is recognized that the relocation may not succeed but that valuable information will nevertheless be provided to the Department of Fish and Game on the potential for using relocation as a mitigation measure on future projects." As stated previously, the applicant has requested the U.S. Fish and Wildlife Service initiate the "conferencing" process to address what steps can be taken now that the salamander has been designated as threatened species. Aside from the report on the tiger salamander, a review of the mitigation monitoring for compliance with the other mitigations measures is not needed at this time. Staff is currently reviewing the Mitigation Monitoring on the California tiger salamander report for staff approval.

Creek B Mitigation Monitoring Report: Creek B located along the southerly boundary of the golf course, was damaged by landslides after severe rain storms in 1998. Mission Peak Development Company the developer of Avalon Homes, which lies adjacent the golf course, was owner of the golf course property, including Creek B at the time. Avalon Homes was required by the Corps of Engineers, California Department of Fish and Game, and the California Regional Water Quality Board to repair Creek B and its riparian habitat. A restoration plan, including a mitigation monitoring plan was approved by the above mentioned public agencies by mid 2001 and a grading plan (PLN 2000-00316) was approved by the Planning Commission on May 24, 2001. The mitigation plan required for this project requires staff approval. The following report on the creek restoration is provided to the Planning Commission for information only.

Work on the restoration began in late summer of 2001, temporarily stopped during the rainy season of 2001-2002 and essentially completed by the summer of 2002 (with remediation occurring as needed since then). Avalon submitted their second annual mitigation monitoring report, indicating that the creek bed of the upper segment is stable with minor changes noticeable. The lower segment of Creek B will be monitored next year. The revegetation along Creek B is taking hold and the water quality has significantly improved since the restoration project has been completed. The irrigation system has been extended to a couple of areas where plantings were not surviving at an acceptable rate. Minor repairs to one of the rock structures are scheduled for this fall. The City Engineer is preparing a letter approving this year's annual review. Double Wood has formally agreed to take over responsibility for maintaining and monitoring the Creek B restoration project.

Response from Agencies and Organizations: No comments have been received.

Enclosures: Developer's Compliance letter, dated August 25, 2004 (informational).

Exhibits: None

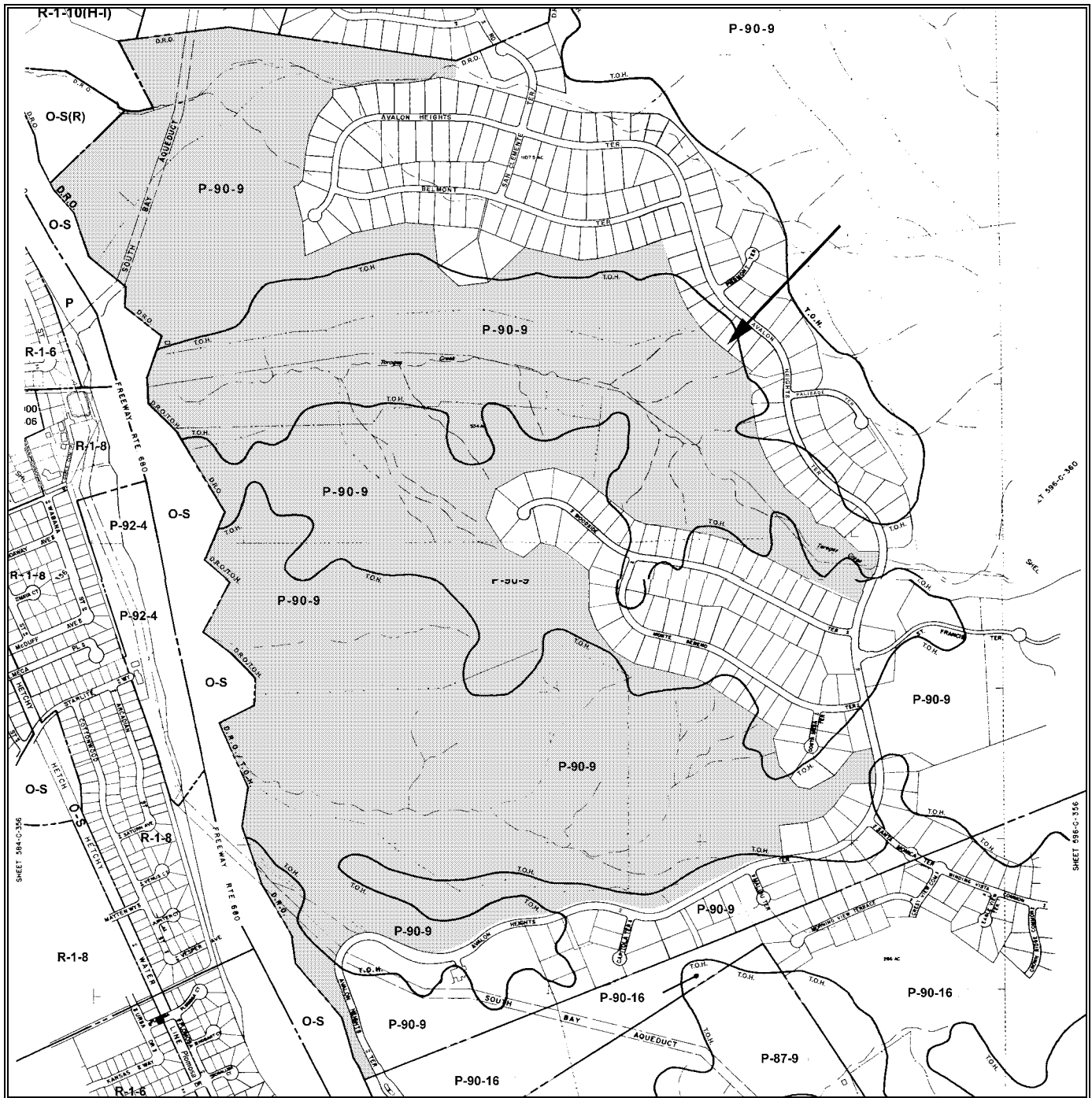
Informational Exhibits: General Plan and Zoning Exhibits (Note to reviewers: the General Plan and Zoning maps do not reflect Measure T changes, which have not yet been adopted by City Council.)

Recommended Actions:

1. Hold public hearing.
2. Find the annual review of the Development Agreement is not a project as defined in CEQA Guidelines Section 15168 and that no further environmental document is needed for this review.
3. Find on the basis of evidence in the record and presented at the public hearing, that for the review period of 2003-2004, the developer has complied with its obligations under Development Agreement PLN2002-00273 between the City of Fremont and Double Wood Golf Course, LLC.

Existing Zoning

Shaded Area represents the Project Site



Existing General Plan
Shaded Area represents the Project Site

